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8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2009-29

12 **DEBORAH MAY McEWAN**
22 Great Oaks Blvd., #230
13 San Jose, California 95119

ACCUSATION

14 Certified Public Accountant Certificate
No. CPA 34741

15 and

16 **McEWAN & ASSOCIATES, INC.**
22 Great Oaks Blvd., #230
17 San Jose, California 95119

18 Certified Public Accountancy Corporation
19 Certificate No. COR 6096

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

24 1. Patti Bowers (Complainant) brings this Accusation solely in her official
25 capacity as the Executive Officer of the California Board of Accountancy, Department of
26 Consumer Affairs.

27 2. On or about May 7, 1982, the California Board of Accountancy issued
28 Certified Public Accountant Certificate Number CPA 34741 to Deborah May McEwan

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1 (Respondent McEwan). The Certified Public Accountant Certificate was in full force and effect
2 at all times relevant to the charges brought herein and will expire on April 1, 2010, unless
3 renewed.

4 3. On or about May 15, 2008, the California Board of Accountancy issued
5 Certified Public Accountancy Corporation Certificate Number COR 6096 to McEwan &
6 Associates, Inc. (Respondent Corporation). The Certified Public Accountancy Corporation
7 Certificate will expire on June 1, 2010, unless renewed.

8 **JURISDICTION**

9 4. This Accusation is brought before the California Board of Accountancy
10 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
11 references are to the Business and Professions Code (Code) unless otherwise indicated.

12 **STATUTORY AND REGULATORY PROVISIONS**

13 5. Section 5050.1(a) of the Code states:

14 "Any person that engages in any act that is the practice of public accountancy in
15 this state consents to the personal, subject matter, and disciplinary jurisdiction of the board. This
16 subdivision is declarative of existing law."

17 6. Section 5035 of the Code states:

18 "'Person' includes individual, partnership, firm, association, limited liability
19 company, or corporation, unless otherwise provided."

20 7. Section 5156 of the Code states:

21 "An accountancy corporation shall not do or fail to do any act the doing of which
22 or the failure to do which would constitute unprofessional conduct under any statute, rule or
23 regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound
24 by such statutes, rules and regulations to the same extent as a person holding a permit under
25 Section 5070 of this code. The board shall have the same powers of suspension, revocation and
26 discipline against an accountancy corporation as are now or hereafter authorized by Section 5100
27 of this code, or by any other similar statute against individual licensees, provided, however, that
28 proceedings against an accountancy corporation shall be conducted in accordance with Chapter 5

1 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code,
2 and the board shall have all the powers granted therein."

3 8. Section 5154 of the Code states:

4 "Except as provided in Section 5079 of this code and in Section 13403 of the
5 Corporations Code, each director, shareholder, and officer of an accountancy corporation shall be
6 a licensed person as defined in the Moscone-Knox Professional Corporation Act, or a person
7 licensed to render the same professional services in the jurisdiction or jurisdictions in which the
8 person practices."

9 9. Section 5079(a)(7) of the Code states, in pertinent part:

10 "Except as permitted by the board in the exercise of its discretion, a person may
11 not become a nonlicensee owner or remain a nonlicensee owner [of a firm engaged in the
12 practice of public accountancy in this state] if the person has . . .

13 "(B) Had a professional license or the right to practice revoked or suspended for
14 reasons other than nonpayment of dues or fees, or has voluntarily surrendered a license or right to
15 practice with disciplinary charges or a disciplinary investigation pending"

16 10. Section 5051 of the Code states:

17 "Except as provided in Sections 5052 and 5053, a person shall be deemed to be
18 engaged in the practice of public accountancy within the meaning and intent of [Chapter 1 of
19 Division 3 (commencing with Section 5000)] if he or she does any of the following:

20 "(a) Holds himself or herself out to the public in any manner as one skilled in the
21 knowledge, science, and practice of accounting, and as qualified and ready to render professional
22 service therein as a public accountant for compensation.

23 "(b) Maintains an office for the transaction of business as a public accountant.

24 "(c) Offers to prospective clients to perform for compensation, or who does
25 perform on behalf of clients for compensation, professional services that involve or require an
26 audit, examination, verification, investigation, certification, presentation, or review of financial
27 transactions and accounting records.

28 "(d) Prepares or certifies for clients reports on audits or examinations of books or

1 records of account, balance sheets, and other financial, accounting and related schedules,
2 exhibits, statements, or reports that are to be used for publication, for the purpose of obtaining
3 credit, for filing with a court of law or with any governmental agency, or for any other purpose.

4 "(e) In general or as an incident to that work, renders professional services to
5 clients for compensation in any or all matters relating to accounting procedure and to the
6 recording, presentation, or certification of financial information or data. . . ."

7 11. Section 5100 of the Code states, in pertinent part:

8 "After notice and hearing the board may revoke, suspend, or refuse to renew any
9 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5
10 (commencing with Section 5080), or may censure the holder of that permit or certificate for
11 unprofessional conduct that includes, but is not limited to, one or any combination of the
12 following causes:

13

14 "(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in
15 the same or different engagements, for the same or different clients, or any combination of
16 engagements or clients, each resulting in a violation of applicable professional standards that
17 indicate a lack of competency in the practice of public accountancy or in the performance of the
18 bookkeeping operations described in Section 5052.

19

20 "(g) Willful violation of this chapter or any rule or regulation promulgated by the
21 board under the authority granted under this chapter. . . ."

22 12. Section 5062 of the Code states: "A licensee shall issue a report which
23 conforms to professional standards upon completion of a compilation, review or audit of
24 financial statements."

25 13. Section 5060 of the Code states, in pertinent part:

26 "(a) No person or firm may practice public accountancy under any name which is
27 false or misleading.

28 "(b) No person or firm may practice public accountancy under any name other

1 than the name under which the person or firm holds a valid permit to practice issued by the
2 board.

3 "(c) Notwithstanding subdivision (b), a sole proprietor may practice under a name
4 other than the name set forth on his or her permit to practice, provided the name is registered by
5 the board, is in good standing, and complies with the requirements of subdivision (a). . . ."

6 14. Title 16, California Code of Regulations, section 58 (Board Rule 58)
7 provides that "licensees engaged in the practice of public accountancy shall comply with all
8 applicable professional standards, including but not limited to generally accepted accounting
9 principles and generally accepted auditing standards."

10 15. Title 16, California Code of Regulations, section 87 (Board Rule 87)
11 states, in pertinent part:

12 "(a) 80 Hours. As a condition of active status license renewal, a licensee shall
13 complete at least 80 hours of qualifying continuing education as described in Section 88 in the
14 two-year period immediately preceding license expiration, and meet the reporting requirements
15 specified in subsection (a) of Section 89. A licensee engaged in the practice of public
16 accountancy as defined in Section 5051 of the Business and Professions Code is required to hold
17 a license in active status. No carryover of continuing education is permitted from one two-year
18 license renewal period to another.

19

20 "(c) Accounting and Auditing Continuing Education Requirement. A licensee
21 who engages in planning, directing, performing substantial portions of the work, or reporting on
22 an audit, review, compilation, or attestation service, shall complete 24 hours of the 80 hours of
23 continuing education required pursuant to subsection (a) in the course subject matter specified in
24 this subsection. Course subject matter must pertain to financial statement preparation and/or
25 reporting (whether such statements are prepared on the basis of generally accepted accounting
26 principles or other comprehensive bases of accounting), auditing, reviews, compilations, industry
27 accounting, attestation services, or assurance services. This continuing education shall be
28 completed in the same two-year license renewal period as the report is issued. If no report is

issued because the financial statements are not intended for use by third parties, the continuing education shall be completed in the same two-year license renewal period as the financial statements are submitted to the client.

"(d) A licensee who must complete continuing education pursuant to subsections (b) and/or (c) of this section shall also complete an additional eight hours of continuing education specifically related to the detection and/or reporting of fraud in financial statements. This continuing education shall be part of the 80 hours of continuing education required by subsection (a), but shall not be part of the continuing education required by subsections (b) or (c). This requirement applies to licensees who renew their licenses on or after July 1, 2005.

• • • •

"(g) Failure to Comply. A licensee's willful failure to comply with the requirements of this section shall constitute cause for disciplinary action pursuant to Section 5100(g) of the Accountancy Act."

16. Title 16, California Code of Regulations, section 89 (Board Rule 89) states, in pertinent part:

"(c) If continuing education credit for attending a continuing education course is claimed, the licensee shall obtain and retain for four years after renewal a certificate of completion or its equivalent

"(d) If continuing education credit is claimed for completing a self-study course, the licensee shall obtain and retain for four years after renewal a certificate of completion or its equivalent

• • • •

"(k) A licensee's willful making of any false or misleading statement, in writing, regarding his or her continuing education shall constitute cause for disciplinary action pursuant to section 5100(g) of the Accountancy Act."

COST RECOVERY

17. Section 5107(a) of the Code states:

"The executive officer of the board may request the administrative law judge, as

part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

APPLICABLE PROFESSIONAL STANDARDS

18. Standards of practice pertinent to this Accusation and the engagement in issue include, without limitation:

A. Generally Accepted Auditing Standards ("GAAS") issued by the American Institute of Certified Public Accountants (AICPA). The ten GAAS (AU §150), which are interrelated, are discussed in the Statements on Auditing Standards ("SAS"). The SAS are codified, by "AU" number, in the AICPA's *Codification of Statements on Auditing Standards*. Among the SAS relevant herein, in addition to AU §150 which sets forth the Generally Accepted Auditing Standards and introduces the concepts of "materiality" and "audit risk," are: AU §311 (Planning and Supervision); AU §312A (Audit Risk and Materiality in Conducting an Audit); AU §316A.83 (Documenting the Auditor's Consideration of Fraud); AU §319.83 (Documenting the Assessed Level of Control Risk); AU §326A (Evidential Matter); AU §329 (Analytical Procedures); AU §339A (Audit Documentation); AU §508 (Auditor's Report); and AU §560 (Subsequent Events).

B. Generally Accepted Accounting Principles ("GAAP"), derived from various authoritative sources. AU §411 provides guidance to the auditor concerning the "Meaning of 'Present Fairly in Conformity with GAAP.'" This guidance relates to the auditor's duties under both GAAS and GAAP. AU §411.18 sets forth the "GAAP Hierarchy Summary." GAAP relevant herein include, without limitation:

(1) Statements and Interpretations (SFAS or FAS) issued by the Financial Accounting Standards Board¹ (FASB). FAS and APB Opinions (see paragraph (2) immediately

1. The FASB is the private sector organization which has been primarily responsible for promulgating GAAP since 1973. Before the FASB, the Accounting Principles Board (APB) issued opinions from 1959 through 1973.

1 following) are codified by topic in the AICPA's publication *Current Text*. These
2 pronouncements are the most authoritative source for GAAP. The statements pertinent herein
3 include, without limitation: SFAS No. 94-6 (Disclosure of Certain Significant Risks and
4 Uncertainties); SFAS No. 95 (Statement of Cash Flows); SFAS No. 109, paragraphs 43-45
5 (Financial Statement Disclosure); SFAS No. 115, paragraph 6 (Accounting for Certain
6 Investments in Debt and Equity Securities); SFAS No. 154, paragraph 25 (Correction of an Error
7 in Previously Issued Financial Statements); and SFAS No. 154, paragraph 26 (Disclosures).

8 (2) Statements issued by the Accounting Principles Board² of the AICPA,
9 including *APB No. 12* (Classification & Disclosure of Allowances, etc.).

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Gross Negligence: Business and Professions Code § 5100(c))**

12 19. Respondent McEwan performed an audit of the financial statements for
13 Monterey County Association of Realtors (Association) for the year ended June 30, 2006 in a
14 grossly negligent manner. Respondent McEwan issued the auditor's report on or about
15 September 7, 2006. The audit engagement was required to be performed in accordance with
16 GAAS and GAAP, which constitute the standard of practice in the State of California.³

17 20. Respondent McEwan's gross negligence included the following extreme
18 departures from GAAS:

19 **Auditor's Report**

20 A. Respondent McEwan's report failed to indicate the degree of responsibility
21 Respondent is taking for the cash flow statement presented with the Association's financial
22 statements (AU §150).

23 B. Respondent McEwan's report failed to specifically identify each financial
24 statement audited in its introductory paragraph (AU §508.06).

25
26 2. See footnote 1.

27 3. Board Rule 58 provides that licensees of the Board engaged in the practice of
28 accountancy shall comply with all applicable professional standards, including but not limited
to generally accepted accounting principles and generally accepted auditing standards.

1 C. Respondent McEwan's report omitted required language regarding the
2 nature of the audit performed, including a statement that the audit was conducted in accordance
3 with GAAS of the United States. (AU §508.08).

4 D. Respondent McEwan failed to modify her report for the following
5 departures from GAAP:

6 i. The Association's use of estimates was not disclosed (SOP 94-6,
7 paragraph 11);

8 ii. Cash paid for interest and income tax was not disclosed (SFAS 95,
9 paragraph 29);

10 iii. The Association's investments were not classified by type and disclosures
11 related to the classifications were not presented (SFAS 115, paragraph 6);

12 iv. The net deferred tax liability was not disclosed (SFAS 109, paragraph 43);

13 v. The significant components of income tax attributable to continuing
14 operations were not disclosed (SFAS 109, paragraph 45);

15 vi. Prior period adjustments were not disclosed (SFAS 154, paragraph 25);

16 and

17 vii. The restatement of the Association's previously issued financial statements
18 due to error was not disclosed or described (SFAS 154, paragraph 26).

19 **Audit Documentation**

20 E. Respondent McEwan failed to adequately plan and document her audit
21 procedures, including obtaining a sufficient understanding of the Association, assessing the risk
22 of material misstatement of the financial statements due fraud, and assessing control risk
23 (AU §150; AU §311.04; AU §311.06; AU §316A.83; AU §319.83; AU §329.01; AU §329.06
24 and AU §339A.04).

25 F. Respondent McEwan failed to obtain sufficient appropriate audit evidence
26 by performing and documenting audit procedures to afford a reasonable basis for an opinion
27 regarding the financial statements under audit, to obtain and evaluate evidential matter
28 concerning the assertions in the financial statements, to develop specific audit objectives in light

1 of those assertions, and to provide audit documentation sufficient to show that the standards of
2 fieldwork were observed (AU §150; AU §312A.25; AU §326A.02; AU §326A.03;
3 AU §326A.09; AU §339A.04; AU §560.10-12).

4
5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Failure to Issue Report Conforming to Professional Standards:**

7 **Business and Professions Code §§ 5100(g) and 5062)**

8 21. Incorporating by reference the allegations in paragraphs 19 and 20, cause
9 for discipline of Respondent McEwan's license is established under Code section 5100(g), in that
10 Respondent McEwan's auditor's report does not conform to professional standards, as required by
11 Code section 5062.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Violation of Professional Standards:**

14 **Business and Professions Code § 5100(g) and Board Rule 58)**

15 22. Incorporating by reference the allegations in paragraphs 19 and 20, cause
16 for discipline of Respondent McEwan's license is established under Code section 5100(g) in
17 conjunction with Board Rule 58 in that Respondent McEwan's failures constitute multiple willful
18 violations of applicable professional standards.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Continuing Education Basic Requirements:**

21 **Business and Professions Code § 5100(g) and Board Rule 87)**

22 23. Cause for discipline of Respondent McEwan's license is established under
23 Code section 5100(g) in conjunction with Board Rule 87 in that Respondent McEwan failed to
24 comply with the accounting and auditing continuing education requirement. The circumstances
25 are set forth in paragraph 19, below.

26 24. On or about March 25, 2006, Respondent McEwan submitted her
27 application for license renewal, stating therein that she had primary responsibility for and
28 authority to sign accountant's reports on financial statements during the two-year period

1 preceding the renewal expiration date of March 31, 2006. The courses listed as supporting her
2 renewal application, however, did not comply with the Board's continuing education requirement
3 because Respondent McEwan did not complete eight hours in course work specifically related to
4 the detection and/or reporting of fraud in financial statements.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Control and Reporting: Business and Professions Code § 5100(g) and Board Rule 89)**

7 25. Cause for discipline of Respondent McEwan's license is established under
8 Code section 5100(g) in conjunction with Board Rule 89 in that Respondent McEwan failed to
9 retain documentation supporting the continuing education hours claimed on her renewal
10 applications for the renewal periods ending March 31, 2006 and March 31, 2008. The
11 circumstances are set forth in paragraphs 21 and 22, below.

12 26. For the renewal period ending March 31, 2006, Respondent McEwan
13 provided certificates of completion for only 46 of the required 80 hours of continuing education
14 course work. In addition, Respondent McEwan failed to provide evidence of the completion of
15 an eight-hour ethics course and an eight-hour fraud course, and provided evidence of the
16 completion of only 5 hours of the required 24 hours of course work in accounting and auditing.

17 27. For the renewal period ending March 31, 2008, Respondent McEwan
18 failed to provide evidence of the completion of an eight-hour course in a fraud-related subject.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Name of Firm: Business and Professions Code §§ 5100(g) and 5060)**

21 28. Cause for discipline of Respondent McEwan's license is established under
22 Code section 5100(g) in conjunction with Code section 5060 in that Respondent McEwan failed
23 to register the firm names of McEwan and Associates Certified Public Accountants and McEwan
24 & Associates, Inc. with the Board while engaging in the practice of public accountancy as
25 defined by Code section 5051. The circumstances are set forth in paragraphs 24 and 25, below.

26 29. From on or about November 8, 2007 to on or about March 11, 2008,
27 Respondent McEwan's website advertised public accountancy services in the name of McEwan
28 and Associates Certified Public Accountants. The firm name of McEwan and Associates

1 Certified Public Accountants has never been registered with the Board.

2 30. The firm name of McEwan & Associates, Inc. was not registered with the
3 Board until on or about May 15, 2008. Respondent McEwan, however, has been practicing
4 under the firm name of McEwan & Associates, Inc. since at least on or about April 21, 2006.

5 **OTHER MATTERS**

6 31. Pursuant to Code section 5107, it is requested that the administrative law
7 judge, as part of the proposed decision in this proceeding, direct Respondents to pay to the Board
8 all reasonable costs of investigation and prosecution in this case, including, but not limited to,
9 attorneys' fees.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

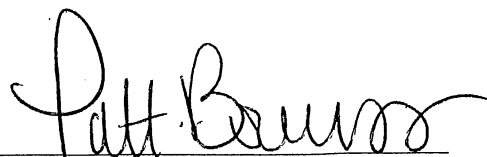
13 1. Revoking or suspending or otherwise imposing discipline upon Certified
14 Public Accountant Certificate Number CPA 34741, issued to Deborah May McEwan;

15 2. Revoking or suspending or otherwise imposing discipline upon
16 Corporation Certificate Number COR 6096, issued to McEwan & Associates, Inc.;

17 3. Ordering Deborah May McEwan and McEwan & Associates, Inc. to pay
18 the California Board of Accountancy the reasonable costs of the investigation and enforcement of
19 this case, pursuant to Business and Professions Code section 5107; and

20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: August 24, 2009

23
24 
25 PATTI BOWERS
26 Executive Officer
27 California Board of Accountancy
28 Department of Consumer Affairs
State of California
Complainant